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EXAMINER

RAMPURIA, SATISH

ART UNIT	PAPER NUMBER
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2191

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10/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/600,223	Applicant(s) HERLE, SUDHINDRA P.	
	Examiner SATISH RAMPURIA	Art Unit 2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. This action is in response to the amendment filed on 08/13/2008.
2. Claims 1-24 are pending.

Response to Arguments

Applicant's arguments filed 08/13/2008 have been fully considered but they are not persuasive.

(A) In response to applicants arguments that neither Cupps nor O'Neill, nor any combination of them, teaches or suggests that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in second memory, associated with the second CPU. Nothing in Cupps or O'Neill teaches that this would be desirable or operable, or that there would be any predictable result or likelihood of success. Examiner respectfully disagrees. The combination of Cupps and O'Neill discloses the claimed limitations. For example, O'Neill teaches first CPU (paragraph [0032] "FIG. 2 is a system diagram of a wireless communication device") downloads said software upgrade file from said wireless network (paragraph [0032] "download agent... download... software... from a distribution environment") and stores said downloaded software upgrade file in said memory (paragraph [0032] "upload agent... uploads software form the non-volatile or volatile memories... of wireless communication devices"). As indicated in the rejection that O'Neill does not explicitly disclose a second memory and a second CPU, however, Cupps in combination of O'Neill teaches dual processor wireless device e.g., a second central processing unit (CPU) (paragraph [0013] "The second processor processes the programs and data");

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and a second memory associated with said second CPU (paragraph [0119] “memory 308... divided into two portions of high speed synchronous RAM, with system processor 302 and processor 320 being allocated their own separate portions of RAM 308”). The rejection also clearly points out the motivation to combine their teachings to maintain the power and memory of a such small devices such as cellular phone to allow perform the complex function for user’s need see paragraphs [0003] and [0013]. Therefore, the rejection is proper and maintained herein.

(B) In response to applicants arguments that O’Neill reference (10/631,567) [which was referred as ‘721 by the applicants] do not appears to be prior art for this application because the continuation application (10/311,462) [which was referred as ‘414 by the applicants] of ‘721 do not support the subject matter of present invention e.g., ‘414 does not discuss a “wireless communication device” at all. Thus the rejection is improper. Examiner respectfully disagrees. ‘414 is towards updating and distributing information to client devices, see paragraph [0040]. More particularly, ‘414 disclose updating wireless communication device or mobile phones or cellular phones and mentioned mobile phones or cellular phones many times, for example, see paragraphs [0004], [0007], [0040], [0055], [0077], [0107], [0108] etc. therefore, the continuation application ‘414 contains the subject matter of the claimed invention and is proper rejection. Further, applicants indicated that provisional applications 60/401,054 and 60/412,850 only references but does not incorporate, however, paragraph [0002] clearly indicate that these applications are incorporated as well and it is also indicated in eDAN and in PAIR that ‘721 claims the priority of provisional applications 60/401,054 and 60/412,850.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-24 rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication No. 2004/0068721 to O'Neill et al. (hereinafter, O'Neill) in view of US Publication No. 2007/0142083 to Cupps (hereinafter, Cupps).

Per claim 1:

O'Neill discloses:

- A wireless communication device capable of accessing a wireless network and downloading a software upgrade file therefrom (paragraph [0011] “provide software updates to one or more wireless communication devices”), said wireless communication device comprising:
- a first central processing unit (CPU) (paragraph [0032] “FIG. 2 is a system diagram of a wireless communication device”) capable of controlling wireless communications with said wireless network (paragraph [0014] “...distribution environment provides a suitable distribution node... communication device”);
- a first memory associated with (paragraph [0032] “FIG. 2 is a system diagram of a wireless communication device...non-volatile memory... and a volatile memory” Also

See Fig. 2 and related discussion) said first CPU (paragraph [0032] “FIG. 2 is a system diagram of a wireless communication device”);

- wherein said first CPU (paragraph [0032] “FIG. 2 is a system diagram of a wireless communication device”) downloads said software upgrade file from said wireless network (paragraph [0032] “download agent... download... software... from a distribution environment”) and stores said downloaded software upgrade file in said memory (paragraph [0032] “upload agent... uploads software form the non-volatile or volatile memories... of wireless communication devices”).

O'Neill does not explicitly disclose a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU.

However, Cupps discloses in an analogous computer system a second central processing unit (CPU) (paragraph [0013] “The second processor processes the programs and data”) capable of executing at least one end-user application (paragraph [0013] “Programs and data for operating the second processor flow initially into the second processor”) on said wireless communication device (paragraph [0013] “a first... processor and a second... processor are combined in a handheld housing (i.e., wireless communication device”); and a second memory associated with said second CPU (paragraph [0119] “memory 308 is not dual ported, but rather is divided into two portions of high speed synchronous RAM, with system processor 302 and processor 320 being allocated their own separate portions of RAM 308”).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate the method of a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU as taught by Cupps into the method of Network for updating firmware and/or software in wireless communication devices as taught by O'Neill . The modification would be obvious because of one of ordinary skill in the art would be motivated to have a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and a second memory associated with said second CPU to maintain the power and memory of a such a small devices such as cellular phone as suggested by Cupps (paragraph [0003]).

Per claim 2:

The rejection of claim 1 is incorporated and further, O'Neill discloses:

- wherein said first CPU is capable of executing a first upgrade agent program that replaces first existing code associated with a first existing software file in said first memory with first replacement code from said downloaded software upgrade file (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...”).

Per claim 3:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

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- wherein said first upgrade agent program is stored in said first memory ((paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 221 and related discussion).

Per claim 4:

The rejection of claim 3 is incorporated and further, O’Neill discloses:

- wherein said downloaded software upgrade file is transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 223).

Per claim 5:

The rejection of claim 4 is incorporated and further, O’Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...”).

Per claim 6:

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The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is transferred from said second memory and stored in said first memory (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 223).

Per claim 7:

The rejection of claim 6 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file and said first upgrade agent program are transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 223).

Per claim 8:

The rejection of claim 7 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0037] “software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device”).

Per claim 9:

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said second CPU is capable of executing a second upgrade agent program that replaces second existing code associated with a second existing software file in said second memory with second replacement code from said downloaded software upgrade file (paragraph [0037] “software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device”).

Per claim 10:

The rejection of claim 9 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is stored in said second memory (paragraph [0032] “download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...” Also See Fig. 2, element 221 and related discussion).

Per claim 11:

The rejection of claim 10 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is transferred from said first memory and stored in said second memory (paragraph [0032] “download agent...download...software

from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...”).

Per claim 12:

The rejection of claim 11 is incorporated and further, O’Neill discloses:

- wherein said second CPU executes said second upgrade agent program after said second upgrade agent program is transferred into said second memory from said first memory (paragraph [0037] “software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device”).

Claims 13-24 are the method claim corresponding to apparatus/device claims 1-12 respectively, and rejected under the same rationale set forth in connection with the rejection of claims 1-12 respectively, as noted above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: 571-272-2100**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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